

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hughes Network Systems)	DA 99-1283
Wilmington Trust Company)	DA 00-1765
)	
Requests for Waiver of Section 90.665)	
of the Commission's Rules for Certain)	
Major Trading Area-Based 900 MHz)	
Specialized Mobile Radio Licenses)	

ORDER

Adopted: August 22, 2000

Released: August 23, 2000

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On June 16, 1999, Hughes Network Systems (Hughes) and Wilmington Trust Company (Wilmington Trust) (collectively, the Creditors) filed separate requests for waiver of section 90.665 of the Commission's rules for Major Trading Area (MTA)-based 900 MHz Specialized Mobile Radio (SMR) licenses formerly held by Geotek, Inc. (Geotek).¹ We dismiss these waiver requests for lack of standing because the parties who originally filed the requests no longer hold an interest in the licenses.

2. Geotek initially acquired its 900 MHz SMR licenses from the Commission in Auction No. 7 in 1996.² On June 29, 1998, Geotek filed a voluntary petition for reorganization under Chapter 11, Title 11 of the United States Code.³ In formulating a plan of reorganization, Geotek conducted an auction process to determine the party, or parties, to which it would seek to assign its licenses. In early February 1999, Geotek's creditors selected Nextel Communications, Inc. (Nextel) from among the bidders, and, on February 16, 1999, the Bankruptcy Court entered an order authorizing the sale of Geotek's 900 MHz SMR licenses to Nextel. On March 5, 1999, Geotek and its Creditors filed applications with the Commission to assign Geotek's licenses to the Creditors. On March 9, 1999, the Creditors and FCI 900, Inc. (FCI 900) filed applications to further assign them from the Creditors to FCI 900, a wholly owned subsidiary of Nextel.

¹ See Requests for Waiver filed by Hughes Network Systems and Wilmington Trust Company on June 16, 1999 (Waiver Requests). These requests were placed on Public Notice June 30, 1999. *Public Notice*, Wireless Telecommunications Bureau Seeks Comment On a Request for Waiver of the Coverage Requirements for 900 MHz SMR Licenses Filed by Geotek Communications, Inc. and Hughes Network Systems, 14 FCC Rcd. 11216 (WTB 1999). Hughes and Wilmington, together with Geotek, also filed a request for waiver of the three-year filing requirement. See Motion for Extension of Time to File Substantial Service Showing, filed on June 18, 1999 (Filing Extension Request).

² *Public Notice*, FCC Prepared to Award 900 MHz MTA Licenses Additional Payment Due By July 8, 1996, 11 FCC Rcd 7701 (WTB 1996).

³ 11 U.S.C. § 101 *et seq.*

3. On June 16, 1999, the Creditors filed separate requests for waiver of section 90.665 of the Commission's rules. Section 90.665 requires a 900 MHz MTA licensee to place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA within three years of the original license grant, and to at least two-thirds of the MTA population within five years of the original license grant. Alternatively, an MTA licensee may demonstrate, through a showing to the Commission at the five-year mark, that it is providing substantial service in the MTA.⁴

4. In their requests for waiver of section 90.665, the Creditors argued, in part, that because Geotek had never commenced construction, the ultimate successor-in-interest would have to "start from scratch" and, therefore, would require additional time to meet the coverage benchmarks for 900 MHz MTA licensees.⁵ The Creditors asked that the construction schedule for these licenses be restarted as of the date the Commission approved the assignment of the licenses from Geotek to the Creditors.⁶

5. On June 18, 1999, the Creditors, together with Geotek, filed a request for an extension of the deadline for the three-year construction buildout requirements for these licenses.⁷ At three years from original license grant, a 900 MHz MTA-based licensee must either certify that the one-third coverage standard has been satisfied, or provide written notification that it has elected to show substantial service in the MTA five years from original license grant.⁸ Geotek and its Creditors asked that the three-year requirements be waived in order for the successor licensee to make this election.⁹ On August 9, 1999, the Commercial Wireless Division suspended the three-year requirements for these licenses until such time as the Commission ruled on the Creditors' separate requests for waiver of section 90.665 of the Commission's rules.¹⁰

6. In order to comply with a subsequent Department of Justice Consent Decree,¹¹ Nextel withdrew the assignment applications that it had filed with the Commission for those markets covered by the Consent Decree. On January 14, 2000, the Commission approved applications to assign all the licenses to the Creditors, and approved the remaining applications to assign the licenses in the non-Consent Decree

⁴ 47 C.F.R. § 90.665. If a licensee elects the substantial service alternative, it must file written notification with the Commission of its election at the three-year mark. This rule also required an MTA licensee electing the substantial service alternative to file documentation at the three-year mark showing how it would satisfy the substantial service standard within five years. The Wireless Telecommunications Bureau (Bureau), however, waived this latter requirement for all 900 MHz MTA licensees because it was not required for any other service. *See In the Matter of Construction Requirements for Metropolitan Trading Area-Based Licenses in the 896-901/935-940 MHz Band, Order*, 14 FCC Rcd. 13223 (WTB 1999).

⁵ *See* Waiver Requests.

⁶ *Id.*

⁷ *See* Filing Extension Request.

⁸ 47 C.F.R. § 90.665. *See also* 47 C.F.R. § 1.946(d).

⁹ *See* Filing Extension Request.

¹⁰ *In the Matter of Geotek Communications, Inc., Order*, 14 FCC Rcd. 18860 (WTB 1999).

¹¹ *See United States v. Motorola, Inc. and Nextel Communications, Inc.*, 1995 WL 866794 *3 (D.D.C. 1995).

markets to FCI 900.¹²

7. On April 7, 2000 and April 11, 2000, the Creditors submitted applications to assign the licenses in the Consent Decree markets to Neoworld License Holdings, LLC (Neoworld).¹³ On August 4, 2000, the Commission approved these assignment applications.¹⁴ Accordingly, Hughes and Wilmington Trust no longer hold any interest in any of the subject licenses. Therefore, the Creditors no longer have standing to request modifications of Commission requirements concerning these licenses. Accordingly, we dismiss the Creditors' waiver requests for lack of standing.

8. Pursuant to the August 6, 1999 *Order* suspending the three-year construction buildout requirement for all these licenses,¹⁵ the current licensees, FCI 900 and Neoworld, must file their three-year construction buildout certificates within 30 days of the release of this *Memorandum Opinion and Order*. We recognize that the actual three-year date has passed and that these entities have only recently acquired these licenses. On or before September 21, 2000, therefore, FCI 900 and Neoworld must either certify that they have placed into operation a sufficient number of base stations to provide coverage to at least one-third of the MTA population as of September 21, 2000, or notify the Commission that they have elected to demonstrate substantial service at the five-year mark.¹⁶ The five-year buildout requirements for these licenses remain unchanged.

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the separate requests for waiver of section 90.665 of the Commission's rules filed by Hughes Network Systems and Wilmington Trust Company on June 16, 1999 ARE DISMISSED for lack of standing.

¹² Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., and Wilmington Trust Company or Hughes Electronics Corporation, and Applications of Wilmington Trust Company or Hughes Electronics Corporation and FCI 900, Inc., For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, *Memorandum Opinion and Order*, 15 FCC Rcd 790 (WTB, 2000) (Geotek Order). These assignments were consummated on February 2, 2000 and February 9, 2000 respectively.

¹³ Applications of Neoworld License Holdings, Inc., Hughes Electronics Corporation, and Wilmington Trust Company for Assignment of Licenses, File Nos. 0000104291 and 0000103142, filed April 7, 2000 and April 11, 2000, Public Interest Statement at 2.

¹⁴ In re Applications of Neoworld License Holdings, Inc., *Memorandum Opinion and Order*, DA 00-1765 (WTB: rel. August 4, 2000). These assignments were consummated on August 14, 2000.

¹⁵ See n.10, *supra*.

¹⁶ We note that these notifications must be filed electronically via the Universal Licensing System pursuant to section 1.913(b) of the Commission's rules. 47 C.F.R. § 1.913(b).

10. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, on or before September 21, 2000, FCI 900 and Neoworld must either certify that they have placed into operation a sufficient number of base stations to provide coverage to at least one-third of the MTA population as of September 21, 2000 or, alternatively, file written notice that they have elected to demonstrate substantial service at the five-year mark.

Federal Communications Commission

William W. Kunze
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Wireless Telecommunications Bureau